

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SCL050
DA Number	359/2017/1
LGA	Woollahra Council
Proposed Development	Demolition of existing structures and construction of a seven storey mixed use development containing 39 residential units (5 x studios, 12 x 1 bed, 18 x 2 bed & 4 x 3 bed), 3 ground level retail spaces (proposed hours of 6am-10pm Mon-Sat and 7am-10pm Sun) with ground level parking (9 cars) and a basement car park accessed by a car lift (24 cars) and the removal of a tree at the rear of 28 Bay Street. The proposal also includes a Voluntary Planning Agreement (VPA) with an offer of \$500,000 for projects identified in Council's Double Bay Public Domain Strategy
Street Address	30-36 Bay Street & 2 Guilfoyle Avenue Double Bay
Applicant/Owner	Anka Double Bay Pty Ltd
Date of DA lodgement	04/08/2017
Number of Submissions	87 (46 For and 41 Against)
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	Capital Investment Value of \$24,441,098.00
List of all relevant s79C(1)(a) matters	• SEPP 65 • SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005 • STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004 • STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND • STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT • STATE ENVIRONMENTAL PLANNING POLICY 65: APARTMENT DESIGN GUIDE • WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014 • WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015 • SECTION 94 & 94A CONTRIBUTION PLANS • OBJECTORS CONCERNS
List all documents submitted with this report for the Panel's consideration	• Architectural plans and elevations • Referral Response – Urban Design Planner • Referral Response – Engineers • Referral Response – Traffic • Referral Response – Drainage • Referral Response – Health • Referral Response – Trees & Landscape • Referral Response – Ausgrid • Referral Response – WaterNSW • Submissions • Conditions without prejudice • Applicant's legal opinion relating to Clause 4.6 (Mr Galasso's advice)
Report prepared by	Dimitri Lukas – Senior Assessment Officer
Report date	1 June 2018

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **No (see Applicants SEE)**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

DEVELOPMENT APPLICATION ASSESSMENT REPORT

PANEL REFERENCE No.	2017SCL050
FILE No.	DA359/2017/1
COUNCIL WARD	Cooper
ZONING	B2 Local Centre
ADDRESS	30-36 Bay Street & 2 Guilfoyle Avenue DOUBLE BAY
PROPOSAL	Demolition of existing structures and construction of a 7 storey mixed use development containing 39 residential units (5 x studios, 12 x 1 bed, 18 x 2 bed & 4 x 3 bed), 3 ground level retail spaces (proposed hours of 6am-10pm Mon-Sat and 7am-10pm Sun) with ground level parking (9 cars) and a basement car park accessed by a car lift (24 cars) and the removal of a tree at the rear of 28 Bay Street. The proposal also includes a Voluntary Planning Agreement (VPA) with an offer of \$500,000 for projects identified in Council's Double Bay Public Domain Strategy
TYPE OF CONSENT	Integrated development
COST OF WORKS	\$24,441,098.00
DATE LODGED	04/08/2017 – Original Submission 06/10/2017 – Replacement Application
APPLICANT/OWNER	Anka Double Bay Pty Ltd
ASSESSING OFFICER	Mr D Lukas
TEAM LEADER	Mr T Wong
SUBMISSIONS	87 (46 For and 41 Against)
RECOMMENDATION	Refusal

SUMMARY

1. REASONS FOR REPORT TO SYDNEY EASTERN CITY PLANNING PANEL

Pursuant to Schedule 7, Sub-clause 9 of State Environmental Planning Policy (State and Regional Development) 2011, the application is to be determined by the Sydney Eastern City Planning Panel because: “...the development that has a capital investment value of more than \$10 million but less than \$30 million.”

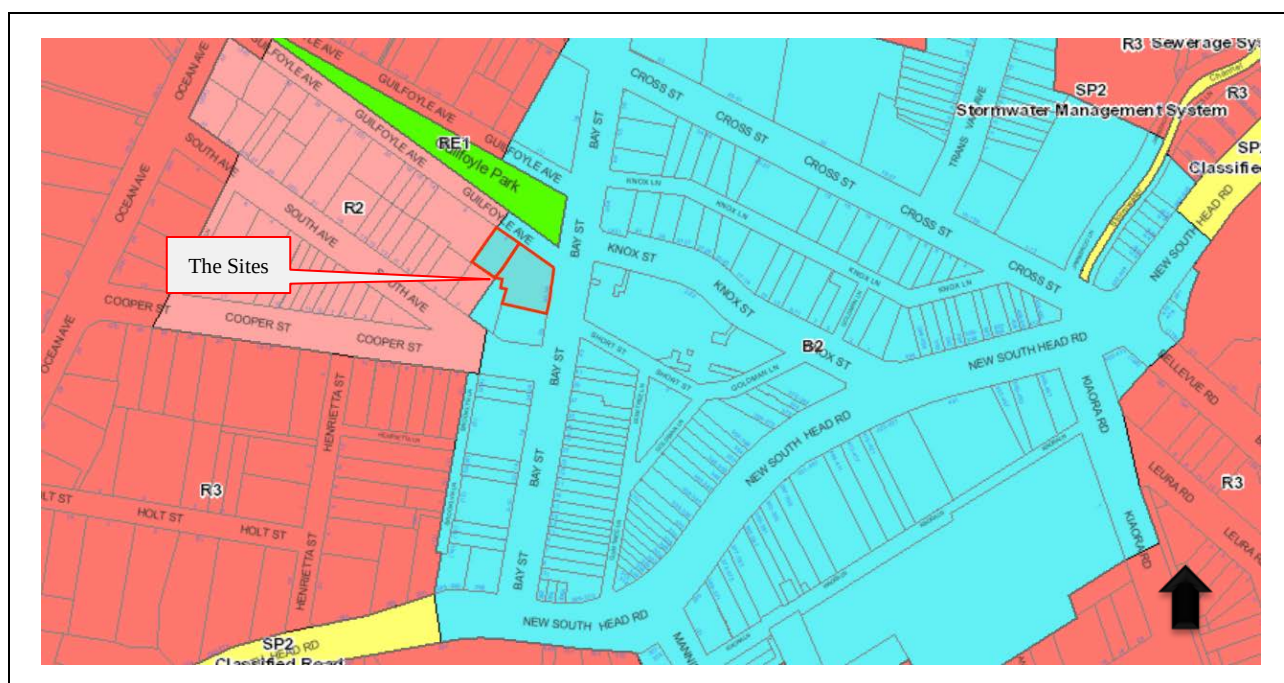
2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the relevant matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979 and is recommended for REFUSAL because:

- The proposal fails to meet the Height of Buildings and Floor Space Ratio development standards prescribed by Woollahra Local Environmental Plan 2014;
- The proposal exceeds the envelope and setback controls prescribed by the State Environmental Planning Policy 65 Apartment Design Guide and Woollahra Development Control Plan 2015;

- The removal of the existing commercial use from the site and the lack of any replacement in the proposed development is detrimental to the business centre and contrary to the key objective of the zone which is: “...to attract new business and commercial opportunities;”
- By virtue of the non-compliances with the height, floor space and envelope controls, the proposal fails to satisfy the key objective of the zone which is: “...to ensure the development is of a height and scale that achieves the desired future character of the neighbourhood;”
- The design of the proposed development is contrary to the relevant planning controls and fails to satisfy the key strategies for the Double Bay Commercial Centre the first of which states: “...Enhance the public domain of Double Bay by applying a co-ordinated approach to the public domain and streetscape;”
- The proposed height and scale of the development is contextually unsuitable to the residential precinct it is attached to and the commercial centre it forms a part of;
- The proposal is not in the public interest.

3. LOCALITY PLAN



4. PROPOSAL

The proposal is for demolition of the existing structures and construction of a new 7 storey shop top housing development.

The composition of the development at ground floor level is for 3 retail spaces, 9 visitor car parking spaces and ancillary areas for services and storage. The proposed hours of operation of the ground floor retail spaces is 6am-10pm Monday-Saturday and 7am-10pm Sunday. Immediately above are 39 residential units comprising 5 x Studios, 12 x 1, 18 x 2 and 4 x 3 Bedroom units. The development contains a basement level that is accessed via a car lift and provides 24 car parking spaces and ancillary areas for services and storage. The removal of a tree that is partially on No.28 Bay Street to the rear forms part of the application. The balance of the proposal includes a Voluntary Planning Agreement (VPA) with an offer of \$500,000 for projects identified in Council's Double Bay Public Domain Strategy.

A Replacement Application was submitted on 6 October 2017 amending the ground floor layout and design to address flooding issues.

A 3D digital model perspective of the proposed development is as follows:



Perspective of the corner of Bay Street and Guilfoyle Avenue
Note: The area shaded in red depicts the current height and envelope controls



Perspective from the top of Bay Street facing north

5. ISSUES SUMMARY

5.1 Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Development Standard - Site Area No.30-36 By Street (767.2m ²) - Site Area No.2 Guilfoyle Avenue (344.6m ²)	Proposed	Control	Departure	Conclusion
Height of Buildings (Clause 4.3) - No.30-36 By Street - No.2 Guilfoyle Avenue	24.11m 24.11m	18.1m 14.7m	6.01m or 33% 9.41m or 64%	Unsatisfactory Unsatisfactory
Floor Space (Clause 4.4) - No.30-36 By Street - No.2 Guilfoyle Avenue - <u>Combined Total</u>	3.79:1 or (2908m ²) 2.64:1 or (911m ²) <u>3.43:1 or (3819m²)</u>	2.5:1 or (1918m ²) 2.5:1 or (861.5m ²) <u>(2776m²)</u>	990m ² or 52% 49.5m ² or 6% -	Unsatisfactory Unsatisfactory -

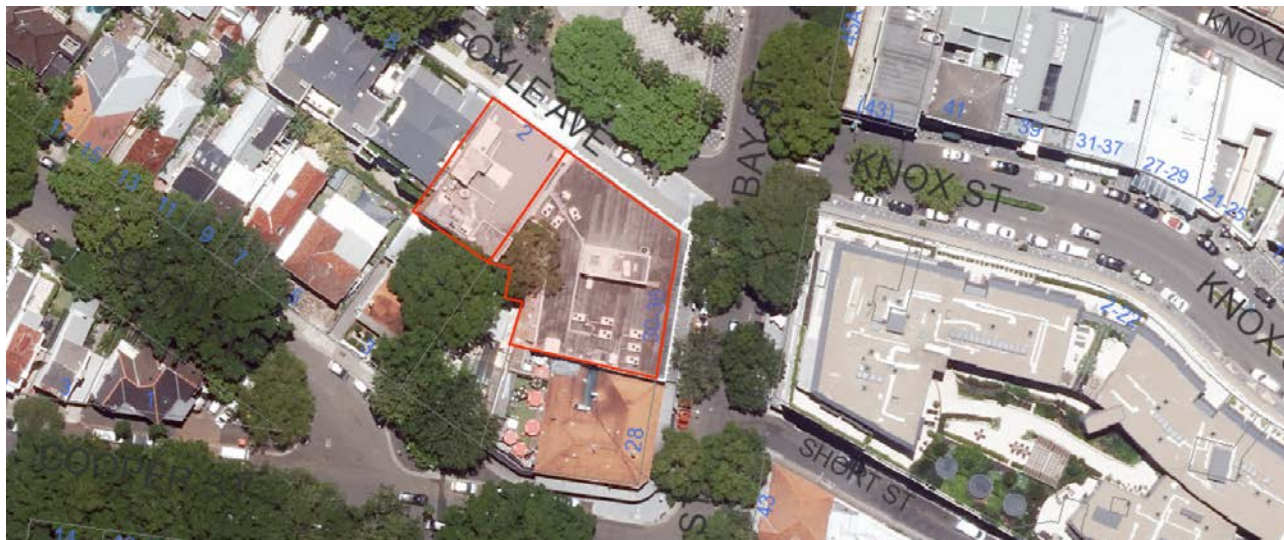
5.2 Summation of all Issues (including Objectors concerns)

- Non-compliance with Planning controls (ie. floor space, setbacks, height, SEPP 65 provisions, car parking)
- Loss of village character
- Height, bulk & scale
- Inconsistent with zone objectives
- Loss of commercial uses detrimental to the centre
- Aural & visual privacy
- Parking
- Traffic
- Construction management
- Pedestrian entrance
- Overshadowing
- Views
- Transition with residential area
- Absence of colonnade
- Deep soil landscaping
- Acid sulfate soils
- Location of plant
- Lack of setbacks
- Parking layout inefficient
- Anti-social behaviour (retail hours)
- Over-development
- Precedent
- Poor design
- Loss of light
- Sense of enclosure
- Inaccurate information submitted
- Detrimental from Sydney Harbour
- Waste management issues
- Should be a Planning Proposal
- Loss of trees
- Wind tunnel

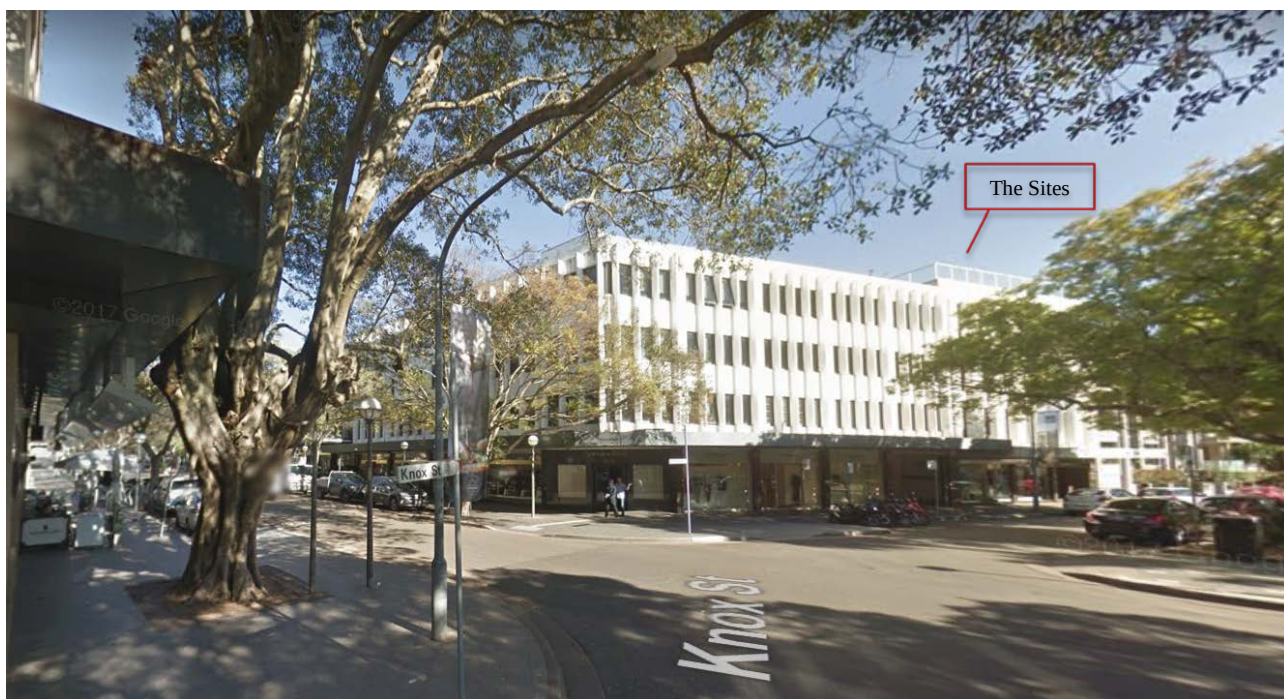
The issues raised against the development are assessed where necessary under the relevant heads of consideration in the body of the report that follows.

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY



Aerial Photo



Photos from Google (Facing south west to corner of Bay Street & Guilfoyle Avenue)



Photos from Google (Facing south towards the Knox Street, Bay Street & Guilfoyle Avenue intersection)



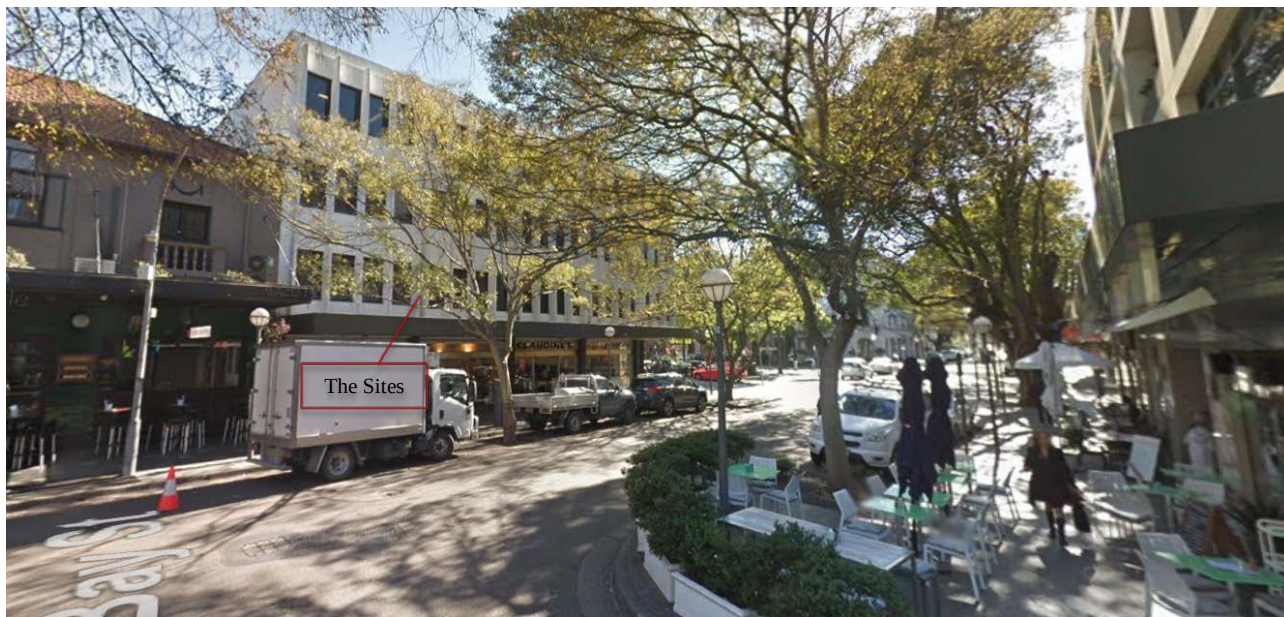
Photos from Google: (Facing east - Guilfoyle Avenue)



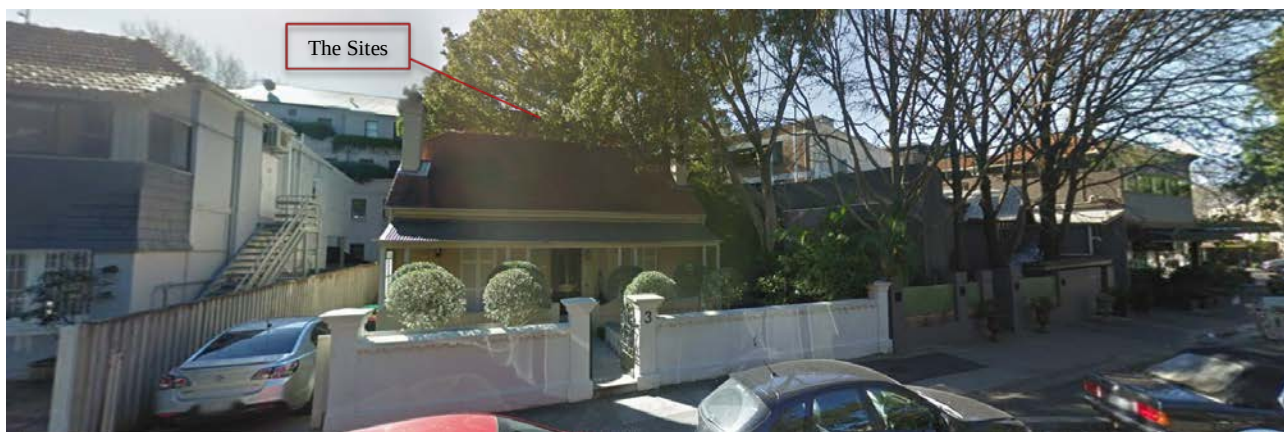
Photos from Google (Facing south from Guilfoyle Park)



Photos from Google: (Facing west - Guilfoyle Avenue)



Photos from Google (Facing North from Bay Street)



Photos from Google: (Facing North from Cooper Street – rear of site)

Physical features
The development encompasses 2 sites. No.30-36 Bay Street, located to the eastern side has frontages to both Bay Street and Guilfoyle Avenue in Double Bay. The smaller lot, No.2 Guilfoyle Avenue, immediately adjoins on the western side and has its primary frontage to Guilfoyle Avenue on its northern side. No.30-36 Bay Street is octagonal in shape with a staggered rear boundary to its south west end. It has boundary dimensions of 24.615m to Bay Street on its eastern side, 23.215m to Guilfoyle Avenue on its northern side, a length of 22.53m and 25.045m on its southern and western side boundary respectively and a total area of 767.2m². No.2 Guilfoyle Avenue is rectangular in shape. It has a frontage of 15.155m to Guilfoyle Avenue, a boundary length of 25.045m and 22.865m on its eastern and western side respectively, a width of 15.089m along its rear southern boundary and a total area of 344.6m².
Topography
The sites are relatively level.
Existing buildings and structures
Occupying both sites is a 4 storey contemporary commercial building with retail on the ground floor and commercial suites above. This building is highly visible from the public domain and is located on the western edge of the Double Bay Commercial Centre.
Environment

The subject sites form part of the central section of Bay Street which is focused on Guilfoyle Park which together with the surrounding streets, creates a generous area of open space to the western edge of the Commercial Centre. The open space is defined and contained by the subject and other buildings on Bay Street and Guilfoyle Avenue.

On the opposite and northern corner of Guilfoyle Avenue and Bay Street is a 5 storey shop-top housing development. On the eastern side of Bay Street, diagonally opposite the Park to the north east, is a 2-storey mixed retail/commercial building. Immediately to the east and opposite the Park is a 5 storey commercial building (Savoy Hotel). The Cosmopolitan Building, at 6 storeys, is diagonally opposite to the south east.

Immediately adjoining to the south of the site is the Royal Oak Hotel, being 2-storeys in height. Immediately adjoining to the west is a 4 storey residential flat building and to the rear, are single storey buildings which form part of a low-density residential precinct.

Development that surrounds the site comprises a mixture of uses such as commercial, retail, hotel, office, residential and places of public entertainment.

7. RELEVANT PROPERTY HISTORY

Current uses
Commercial/Retail
Previous Relevant Applications
There have been numerous applications for change of use and fitout for various retail and commercial suites within the existing building but none are relevant to the scope of works proposed.
Pre-DA
Nil.
Requests for Additional Information
24.08.2017 – Request to provide details on the volume and extent of excavation. 28.09.2017 – Email to applicant to address engineering issues raised (ie flood levels, ramp gradients, sub-station and parking).
Amended Plans/Replacement Application
31.08.2017 – Excavation plan submitted. 06.10.2017 – Revised plans submitted address engineering issues.
Land and Environment Court Appeal
A Class 1 Appeal has been lodged with the Land and Environment Court (Reference Case No.96696 of 2018). A conciliation conference under s34 of the Land and Environment Court Act 1979 is scheduled for 2 October 2018.

8. REFERRALS

Referral	Summary of Comment	Annexure
Urban Design Planner	...The applicant's argument for this significantly non-compliant development proposal is based on the 3.5:1 FSR that the Hill PDA review suggested was needed to make development in Double Bay Centre viable. So this development has been generated with the floor area yield provided by an FSR of 3.5:1 as the predominant criteria. Height has not been considered a constraint. However 7 storeys is not compatible with the desired future character of the location. Two development applications for buildings of 6 storeys have been approved by Council recently. This development is not comparable with these, since it is another storey in height and sits on the edge of the commercial zone adjacent to a 9.5m height limit. Perhaps more significant than the height though from an urban design perspective is that the retail space lacks both quantity and amenity. The viability of the retail spaces is essential to the continuing prosperity of the centre as a place to be. Small poorly serviced retail spaces are not able to attract the diversity of retail offerings required to enable commercial activity in the centre to grow. Recommendation Although it is recognised that the design has qualities, from an urban design perspective the proposal will need to be both significantly lower and provide more and better quality retail spaces to be acceptable.	2
Engineering	The proposal is satisfactory subject to conditions.	3
Traffic	The proposal is satisfactory subject to conditions.	4
Drainage	The proposal is satisfactory subject to conditions.	5
Health	The proposal is satisfactory subject to conditions.	6
Trees	The proposal is satisfactory subject to conditions.	7
Ausgrid	Ausgrid consents to the ...development, subject to ...conditions	8
Water NSW	...WaterNSW has determined that the proposed development will encounter groundwater during the excavation process, and is subject to a Water Supply Work Approval under the Water Management Act 2000 for dewatering during the construction phase. If there is ongoing take of groundwater during the post construction phase, a Water Supply Work Approval and a Water Access Licence will be required. This determination is subject to appropriate construction methods to be employed to minimise volume of groundwater take during the construction phase. WaterNSW provides General Terms of Approval...	9
Fire	No objection raised	n/a

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) The provisions of:
- (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

- (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*
- (b) *The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *The suitability of the site for the development,*
- (d) *Any submissions made in accordance with this Act or the regulations,*
- (e) *The public interest.*

9. ADVERTISING AND NOTIFICATION

9.1 Submissions

The application was advertised and notified in accordance with Chapter A2 of the Woollahra DCP 2015. In response, there was a total of 87 submissions received with **46 For** and **41 Against** the development. The details of the submissions are attached as **Annexure 10**.

The issues raised have been summarised above (Section 5.2) and where required, are addressed in the body of the report.

9.2 Statutory Declaration

The applicant has completed the statutory declaration declaring that the site notice was erected and maintained during the notification period in accordance with Chapter A2 of the Woollahra DCP 2015.

9.3 Replacement Application

The Replacement Application as referenced and detailed above was not renotified to surrounding residents and objectors because, pursuant to Chapters A2.4 and A2.8 of the Woollahra DCP 2015, it would have no greater cumulative environmental or amenity impact.

10. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The development is located on a relatively level and flat site that is partially obscured from the waterway and the foreshores by existing development and landscaping. The subject site is not a land/water interface development but notwithstanding, Division 2 of the SREP prescribes matters for consideration for interrelationship of waterway and foreshore uses as well as maintenance, protection and enhancement of views.

The proposal does not result in any detrimental impact on the wetlands or cause pollution or siltation of the waterway. It does not detrimentally impact on existing vegetation or drainage patterns and does not obstruct vistas of the waterway from the public domain.

The proposal therefore satisfies the relevant criteria prescribed by the SREP.

11. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The SEPP (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the development and relates to commitments in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate committing to environmental sustainability measures relating to thermal comfort, water savings and energy efficiency. The measures as prescribed by Clause 97A of the Environmental Planning and Assessment Regulation 2000 can be imposed by conditional consent.

12. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

Due to existing buildings on the site that limits extensive ground testing, a Report on Preliminary Site Investigation for Contamination with Limited Sampling was undertaken by Douglas Partners (Report No 85575.01 dated April 2017).

This report concludes that the land will likely require further testing but can be made suitable for the proposed development. The recommended measures can be imposed by conditions.

The proposal, subject to appropriate conditions, satisfies the relevant considerations pursuant to this SEPP.

13. STATE ENVIRONMENTAL PLANNING POLICY 64: ADVERTISING AND SIGNAGE

There is no signage proposed under this application.

14. STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

SEPP 65 applies to the subject development which is defined as a shop top housing development. Given the composition of this development is for 3 or more storeys and 4 or more self-contained dwellings, the SEPP applies.

The DA was accompanied by a design verification statement prepared by a qualified designer, as required by the EPA Regulations cl.50(1A).

The instrument requires the proposal be referred to a Design Review Panel. This panel has not been established for the Woollahra area. Notwithstanding, the instrument requires the assessment of the subject development application against the 9 design quality principles and against the relevant objectives of the Apartment Design Guide.

An assessment against the 9 design quality principles follows with summarised comments from both Council's *Urban Design Planner* and Council's planning staff inserted into each relevant head of consideration:

14.1 Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is

important for all sites, including sites in established areas, those undergoing change or identified for change.

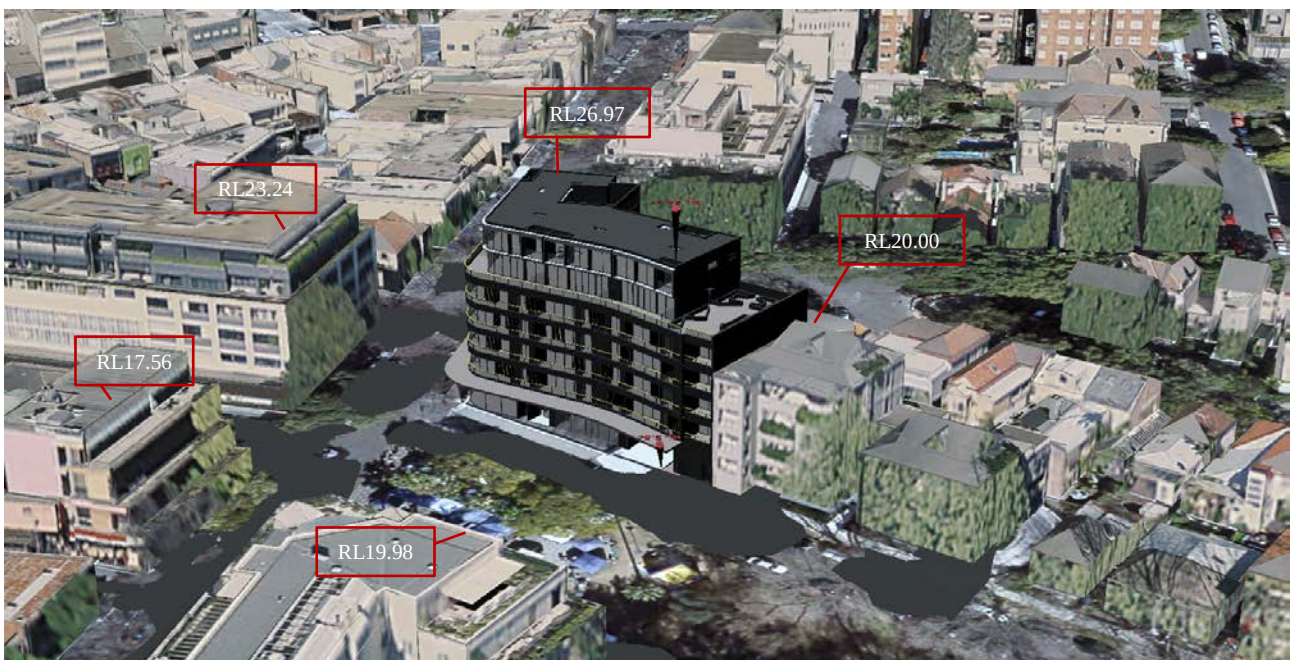
Urban Design Planner's comments: *"The proposed building is 7 levels. The controls for the location envisage 4 levels. Retail space makes up 7% of the GFA of this proposal... (...7 storeys is not compatible with the desired future character of the location ...Perhaps more significant than the height though from an urban design perspective is that the retail space lacks both quantity and amenity. The viability of the retail spaces is essential to the continuing prosperity of the centre as a place to be. Small poorly serviced retail spaces are not able to attract the diversity of retail offerings required to enable commercial activity in the centre to grow)."*

In the Centre there are currently a handful of relatively large developments (ie Cosmopolitan Building immediately opposite to the east at 6 Storeys on Knox Street, Kiaora Lands Development on New South Head Road and the Intercontinental Hotel and the George's building on Cross Street). The Council has also recently issued development consent for shop-top housing developments 6 storey in height on Cross Street (Nos.16-18 and Nos.20-26). These building forms are anomalies within the centre which is typically of low-scale and up to 4 storeys in height.

This site is uniquely positioned at the western edge of the commercial centre and immediately adjoins a residential zone with a maximum height limit of 9.5m.

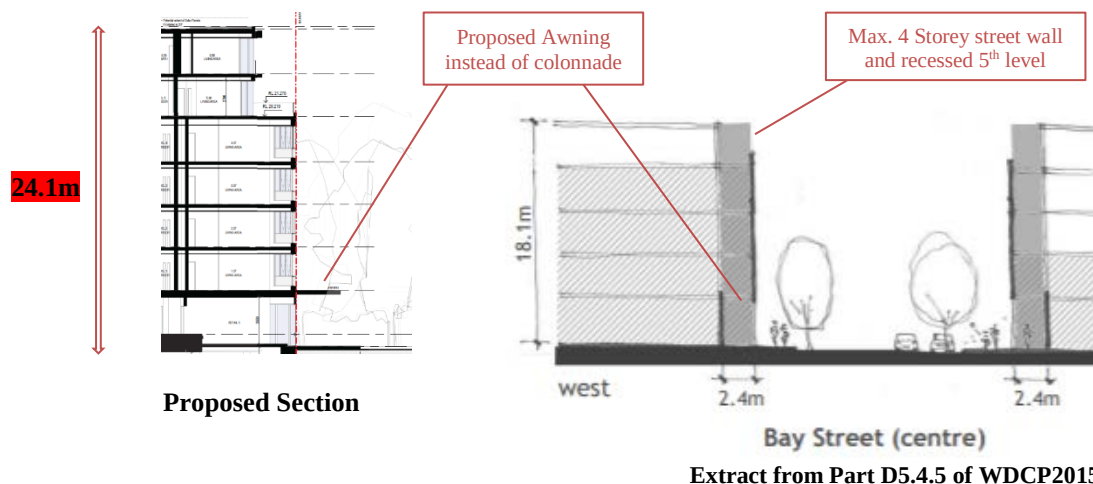
The proposal excessively exceeds the Height of Buildings and Floor Space Ratio development standards prescribed by Woollahra Local Environmental Plan 2014 (WLEP). It inevitably results in a building envelope that exceeds the site specific envelope controls prescribed by the Woollahra Development Control Plan 2015 (WDCP). One of the key objectives of this DCP states "...To ensure new development is compatible with the existing built form, streetscape and village character."

A comparative 3D perspective of the development within the context of its surrounds and the heights of existing surrounding developments is as follows:



The WDCP also provides a desired future character for Bay Street (Centre) which focuses on Guilfoyle Park which is defined by the surrounding buildings. The WDCP states: “...*Expand the public domain at street level and improve civic character with street level colonnades ...Provide a built form that responds to the scale and civic importance of Guilfoyle Park ...Higher buildings are permitted ...to provide appropriate definition of the space.*”

Following is a scaled section comparing the proposed development against the prescribed building envelope controls in the WDCP for this locality:



The proposal does not satisfy the WDCP’s stated key objective or the desired future character for this locality. It also does not provide a satisfactory contextual transition to the low scale residential zone immediately adjoining to the south and west.

The proposal fails to satisfy this principle.

14.2 Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building’s purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Urban Design Planner’s comments: “The site reinforces the street wall to Guilfoyle Avenue and Bay Street. There is a slight concavity to the north elevation which provides identity to the development.”

The building is excessive in built form and scale, which is reflected in the non-compliances with the maximum height and floor space ratio development standards prescribed by the WLEP (further assessment below). The excessive built form and scale of the development is also reflected in the non-compliances with the site specific envelope controls prescribed by the WDCP (further assessment below).

Though the proposal has a street wall design, it extends 1 level too high as depicted in the section exert above. This lack of setback at the upper level provides a disproportional built form and definition around Guilfoyle Park given the height of existing and recently constructed developments on the opposite and adjacent sites. The proposed height and scale of the development, including the new awning, erodes and encloses the spatial qualities of this public open space.

The proposal fails to satisfy this principle.

14.3 Principal 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Urban Design Planner's comments: "The proposal is for 39 apartments. This population density is acceptable in this well serviced location."

The proposal satisfies this principle.

14.4 Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Urban Design Planner's comments: "Solar panels are proposed on the roof. The development proposes a waste chute system which is problematic since it does not encourage responsible recycling and is unable to respond to changes which may occur in the Council's waste regime. The proposal does not provide outdoor drying space as required by the WDCP2015 and the ADG."

The proposal satisfies the relevant design criteria prescribed by the Apartment Design Guide and was accompanied by a BASIX Certificate committing to environmental sustainability measures relating to thermal comfort, water savings and energy efficiency.

Notwithstanding, an outdoor drying space can be provided within the communal open area via a condition of consent.

A garbage chute is provided for the residential units on each floor level and contains both a recyclable and general waste chute that links to a compactor at ground floor level.

The proposal satisfies this principle.

14.5 Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and

contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Urban Design Planner's comments: "There is a small communal garden on the first floor which is unlikely to be viable since it is on the dark side of the building and is immediately adjacent to apartments. The second garden on the sixth floor is better positioned and provides good potential amenity."

The DCP requires a landscaped garden to the rear ground floor of the site.

The rear of the site is inappropriate for landscaping given the nature of existing and permissible developments on and surrounding the site. The rear of the site has limited solar access. Given the confined nature of the rear of the site, any deep soil landscaping provided would be of token value. The proposed communal space to the rear provides an improved separation and transition to the adjoining residential area though the height and scale of these spaces can be improved (further assessment below).

Guilfoyle Park immediately opposite the site provides ample landscape curtilage for this site and this locality.

The proposal satisfies this principle.

14.6 Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Urban Design Planner's comments: "The proposal provides good internal amenity."

The proposal satisfies this principle.

14.7 Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Urban Design Planner's comments: *"There are no safety concerns regarding this principle."*

The proposal satisfies this principle.

14.8 Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Urban Design Planner's comments: *"The proposal provides a wide diversity of dwellings."*

The proposal satisfies this principle.

14.9 Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Urban Design Planner's comments: *"The aesthetics of this proposal are acceptable."*

For reasons already discussed and having regard to the non-compliances with the relevant height, envelope and design controls that follows, the proposal does not provide an appropriate response to the existing or future local context.

The proposal fails to satisfy this principle.

14.10 Apartment Design Guide (ADG)

SEPP 65 Clause 28(2)(c) provides that the consent authority must take into consideration the design criteria prescribed by the ADG. Clause 6 of the SEPP prescribes that in the event of an inconsistency between the SEPP and another environmental planning instrument (ie WLEP & WDCP) this policy prevails to the extent of the inconsistency. Council's Urban Design Planner provides comments in relation to the criteria prescribed by the ADG in the referral response. An assessment is provided against the relevant design guidance and criteria in the ADG as follows:

14.10.1 Compliance Table (Note: Non-compliances are highlighted)

Design Criteria (Site Area: 1111.8m ²)	Proposed	Control	Complies
Communal open space (3D-1) - Minimum area (m ²) - Direct sunlight access to principal part in mid-winter	30% or (336) 45%	25% or (278) <50%	Yes No
Deep soil zones (3E-1) - Area (m ²) - Minimum dimension (m)	0% 0	7% or (78) 3	No No
Minimum separation distances between windows and balconies to side boundaries and between dwellings (3F-1) - Habitable/Non-habitable (up to 4 Storey) (m) - Habitable/Non-habitable (5-8 Storey) (m)	0 / <3 0 / <4.5	9 / 6 12 / 7.5	No / No No / No
Minimum number of apartments that receive 2 hours of solar access during mid-winter to living rooms and private open space (4A-1)	72% or (28)	70% or (27)	Yes
Maximum number of apartments that receive no direct sunlight during mid-winter (4A-1)	10% or (4)	15% or (6)	Yes
Minimum number of apartments that are cross-ventilated (4B-3)	69% or (27)	60% or (23)	Yes
Cross-ventilated apartments (4B-3) - Maximum depth (m) - Minimum internal width (m)	<18 >4	18 4	Yes Yes
Minimum ceiling heights (4C-1) - Habitable rooms (m) - Non-habitable rooms (m)	2.7 2.4	2.7 2.4	Yes Yes
Minimum internal areas for S/1/2/3 x Beds (m ²) (4D-1)	>35/>50/>70/>90	35/50/70/90	Y/Y/Y/Y
Maximum habitable room depths (m) (4D-2)	8	8	Yes
Master bedroom & other bedrooms (4D-3) - Minimum sizes (m ²) - Minimum dimension (m)	>10 <u>&</u> >9 3	10 <u>&</u> 9 3	Yes Yes
Living rooms minimum widths (4D-3) - Studios & 1 Bed (m) - 2 & 3 Beds (m)	>3.6 >4	3.6 4	Yes Yes
Apartment balconies (S/1/2/3 x Bedrooms) (4E-1) - Minimum area (m ²) - Minimum depth (m)	<4/>8/>10/>12 -/>2/>2/>2.4	4/8/10/12 -/2/2/2.4	N/Y/Y/Y -/Y/Y/Y
Maximum apartments off circulation core (4F-1)	<8	8	Yes
Minimum storage for S/1/2/3 x Bedrooms (m ³) (4G-1)	>4/>6/>8/>10	4/6/8/10	Yes

14.10.2 Site analysis (Part 3)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.3 Orientation (Part 3B)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.4 Public domain interface (Part 3C)

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

14.10.5 Communal and public open space (Part 3D)

The development proposes the required amount of communal open space area on the site but its location to the rear of the site does not enable compliance with the required solar access to this space.

Notwithstanding, providing the communal open space on the site is not considered necessary in this instance because the future residents of this complex would have access to public open space immediately in front of the site in Guilfoyle Park and further afield to Steyne Park which adjoins Sydney Harbour. The future residents would form part of a larger residential community within this urban centre that affords other socially interactive uses such as cafes, restaurants, pubs, gyms etc. The proposal, by virtue of its location, nevertheless satisfies the objective of the design criteria which states in part ...*to enhance residential amenity*.

14.10.6 Deep soil zones (Part 3E)

For reasons discussed, the deep soil zones to the rear of the site are not practical given the orientation of the subject sites, the existing and expected buildings located thereon and the resultant shading to these enclosed spaces.

14.10.7 Visual privacy (Part 3F)

This Design Criteria prescribes a separation distance between windows and balconies of dwellings from the side and rear boundary to be a minimum of 6m up to level 4 and 9m from level 5 and above. An additional 3m is also applied according to Figure 3F.5 when adjacent to a low density residential zone.

The proposal does not comply with this minimum setback control on its western and southern side, which immediately adjoins a residential area. Notwithstanding, there is scope to vary this setback requirement on its western side up to level 4. The reason being is the relatively recently constructed residential flat building immediately adjoining is constructed to its eastern boundary.

A comparative scaled view of the northern elevation is illustrated below:



In this circumstance, a zero setback along the western side of the development is acceptable up to level 4 similar to what presently exists. Above this point, which is at the height of the roof of the adjoining residential building, the development at level 5 should comply with the required 9m setback. This required setback enables a satisfactory transition to the adjoining residential zone and provides adequate separation and privacy between residents of the subject and adjoining sites. This required setback also enables additional solar access to penetrate to the rear private open space of the residential dwelling immediately behind to the south (No.3 South Avenue). Levels 6 & 7 are

considered excessive in height having regard to the context of existing built forms immediately adjoining and the desired future character.

The rear setback of the development, particularly its upper levels, also do not comply with the minimum 12m setback requirement. The lack of separation compromises the amenity of both the existing adjoining and potential future residents of the development with regard to privacy, scale, bulk, solar access and sense of enclosure.

There is also a lack of separation afforded between units within the complex on the south eastern side at Level 1 between a private terrace and an adjoining bedroom window. This configuration potentially compromises the privacy of these residents.

The elevated communal open space to the rear of the development potentially compromises the rear private open space of the dwelling immediately adjoining to the south (No.3 South Ave). The gathering of people on this elevated level would enable direct sightlines into the only private open space and living areas to the rear of this property. Constructing a screen wall or boundary fence at an elevated level would be a minimum of 4.5m in height and would cause additional overshadowing, scale, bulk and sense of enclosure to this residential property.

For these reasons, the proposal fails to satisfy the relevant objective and design criteria prescribed by this Part.

14.10.8 Pedestrian Access and Entries (Part 3G)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.9 Vehicle access (Part 3H)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.10 Bicycle and car parking (Part 3J)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.11 Solar and daylight access (Part 4A)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.10.12 Natural ventilation (Part 4B)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.10.13 Ceiling heights (Part 4C)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.10.14 Apartment size and layout (Part 4D)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.10.15 Private open space and balconies (Part 4E)

All units must be provided with private open space in the form of balconies. The studios to the rear south eastern side of the development on all levels are not afforded with any balconies (5 in total). Notwithstanding, the development and the proposed studios therein are located within an urban centre that offers a variation in housing stock. These studios would satisfy the objective of this design criteria which states in part because it *...provides a high standard of amenity.*

The balance of the proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.10.16 Common circulation and spaces (Part 4F)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.10.17 Storage (Part 4G)

The proposal satisfies the relevant objective and design criteria prescribed by this Part.

14.10.18 Acoustic privacy (Part 4H)

The Acoustic Assessment (AA) submitted with this application is flawed as it is silent and has made no assessment of the likely impacts from the Royal Oak Hotel immediately adjoining to the south. Rather, the AA states: “*...Potential noise impacts on the site are primarily traffic noise.*” In addition, the noise logger that was used to determine the background noise level was positioned on the opposite end of the site on Guilfoyle Avenue on the opposite side to the hotel. This distorts the potential background noise levels of the locality and its impact on the internal amenity of the units.

The consent authority requirements is for noise from licensed premises must not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am. No consideration or assessment has been provided to ascertain whether or not these standards can be met or what measures can be imposed to mitigate the likely noise impacts associated from the hotel.

As assessed earlier, the lack of separation from the rear boundary may potentially compromise the amenity of the future residents of this development particularly given the site adjoins the existing hotel. The following photo was taken from the existing beer garden towards the existing commercial building that is to be demolished and which has a similar alignment to the proposed development:



For reasons already discussed, insufficient separation is provided between the proposed residential units, the hotel and the dwelling adjoining to the south.

The proposal therefore fails to satisfy the relevant objective and design criteria prescribed by this Part.

14.10.19 Noise and pollution (Part 4J)

Having regard to the AA submitted and the assessment immediately above, insufficient information has been provided to assess the likely impacts on the units from the hotel and the undoubtedly noisy environment that currently exists. There undoubtedly is also a potential pollution problem with the location of the beer garden immediately opposite which caters for smokers.

The proposal fails to satisfy the relevant objective and design guidance prescribed by this Part.

14.10.20 Apartment mix (Part 4K)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.21 Facades (Part 4M)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.22 Roof design (Part 4N)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.23 Landscape design (Part 4O)

Not relevant to the scope of works proposed.

14.10.24 Planting on structures (Part 4P)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.25 Universal design (Part 4Q)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.26 Mixed use (Part 4S)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.27 Awnings and signage (Part 4T)

The site specific controls prescribed by the WDCP prescribes a colonnade for the Guilfoyle Avenue and Bay Street frontages. The recommended requirement for a colonnade is based on a broader strategic approach to the redevelopment of the entire commercial centre and not for a site in isolation. Further assessment provided below.

The awning design as proposed satisfies the relevant objective and design guidance prescribed by this Part.

14.10.28 Energy efficiency (Part 4U)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.29 Water management and conservation (Part 4V)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.10.30 Waste management (Part 4W)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

Further assessment is provided below under DCP provisions.

14.10.31 Building maintenance (Part 4X)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

15. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

NOTE: The provisions of SEPP 65 Clause 6(1) and (2) prescribe that in the event of an inconsistency between the SEPP and another environmental planning instrument the SEPP prevails to the extent of the inconsistency.

15.1 Preliminary (Part 1)

15.1.1 Aims of Plan (Part 1.2)

For the assessment undertaken above and that follows, the proposal fails to satisfy the relevant aims of this plan which state:

- “...(a) to ensure growth occurs in a planned and co-ordinated way;*
- ...(c) to provide for an appropriate balance and distribution of land for commercial, retail, residential and tourist development and for recreation, open space, entertainment and community facilities;*
- ...(g) to protect amenity and the natural environment;*
- ...(l) to ensure that development achieves the desired future character of the area.”*

15.2 Permitted or Prohibited Development (Part 2)

15.2.1 Zone B2 – Local Centre

The proposal is a permissible form of development in the zone.

However, the key objectives of this zone state:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To attract new business and commercial opportunities.*
- *To provide active ground floor uses to create vibrant centres.*
- *To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.*
- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

The composition of the existing building is 4 storeys with the ground floor primarily of retail uses. Immediately above are 3 storeys and more than 1800m² of commercial/office uses. The existing commercial/office uses contain approximately 30 business suites. These existing suites provide employment opportunities, not only to employers and employees located within, but also clients and other workers that interact with these uses be it couriers, delivery drivers, cleaners, technicians etc. The removal of these existing commercial/office uses from this site is to the detriment of the centre and in particular the loss of employment opportunities. The commercial/office uses and associated workers creates a daytime vibrancy that assists in sustaining other retail uses in the centre.

The key objectives of the zone are reinforced in the WDCP Chapter D5 – Part 5.6.2 which prescribes the type of uses for the centre. Objective O4 states “...*Encourage first floor retail and commercial use*”. Control C3 states in part: “...*Design for retail, commercial and community uses at ...first floor levels. Consider design solutions that promote retail, commercial uses at first floor levels...*”

The development does not provide a balanced approach to the type of uses it proposes given what is being removed from this prominent corner location.

The WDCP Chapter D5 – Part 5.4 prescribes the desired future character for this locality which has been assessed earlier. As assessed, the proposal at 7 storeys extends between 6.01m-9.41m over the maximum height control development standard. The proposal excessively exceeds these desired future character height and design controls prescribed by the WLEP and WDCP respectively.

A **Zone Interface** occurs between the subject site (Zone B2 Local Centre) and the properties immediately adjoining to the south and west (Zone R2 Low Density Residential). Consideration has been given to the planning principle set out in the *Seaside Property Developments Pty Ltd v Wyong Shire Council* [2004] NSW LEC 117 (30 March 2004). This states that:

“...As a matter of principle, at a zone interface as exists here, any development proposal in one zone needs to recognise and take into account the form of existing development and/or development likely to occur in an adjoining different zone. In this case residents living in the 2(b) zone must accept that a higher density and larger scale residential development can

happen in the adjoining 2(c) or 2(d) zones and whilst impacts must be within reason they can nevertheless occur. Such impacts may well be greater than might be the case if adjacent development were in and complied with the requirements of the same zone. Conversely any development of this site must take into account its relationship to the 2(b) zoned lands ...and the likely future character of those lands must be taken into account. Also in considering the likely future character of development on the other side of the interface it may be that the development of sites such as this may not be able to achieve the full potential otherwise indicated by applicable development standards and the like.”

In accordance with the planning principle above, the residents immediately adjoining must accept that commercial uses including higher density are permissible on the subject site. Notwithstanding, the proposal must take into account the residential zoning immediately adjoining and any impacts must be reasonable.

For reasons already considered above (SEPP 65 provisions), the proposal does not provide a satisfactory transition to, and compromises the amenity of, the residents within the residential zone immediately adjoining. Accordingly, the proposal is an over development of the site.

Based on the assessment undertaken and that follows the proposal fails to satisfy the key objectives of the zone which are stated above.

Further assessment follows.

15.3 Principal Development Standards (Part 4)

15.3.1 Compliance Table

Development Standard - Site Area No.30-36 By Street (767.2m ²) - Site Area No.2 Guilfoyle Avenue (344.6m ²)	Proposed	Control	Complies
Height of Buildings (Clause 4.3) - No.30-36 By Street - No.2 Guilfoyle Avenue	24.11m 24.11m	18.1m 14.7m	No No
Floor Space (Clause 4.4) - No.30-36 By Street - No.2 Guilfoyle Avenue	3.79:1 or (2908m²) 2.64:1 or (911m²)	2.5:1 or (1918m ²) 2.5:1 or (861m ²)	No No

15.3.2 Height of Buildings (Part 4.3)

The proposal exceeds the maximum building height prescribed by this Part. A Clause 4.6 variation has been submitted by the applicant (refer to SEE document) and is assessed below.

15.3.3 Floor Space Ratio (Part 4.4)

The proposal does not comply with the maximum floor space development standard prescribed by this Part as detailed in the table above. A Clause 4.6 variation has been submitted by the applicant (refer to SEE document) and is assessed below.

15.3.4 Exceptions to floor space ratio (Area 1 – Double Bay) (Part 4.4A)

The primary objective of this clause is “...to encourage the development of prominent corner buildings in Double Bay.”

The subject site is identified as Area 1 and accordingly this Part applies.

Pursuant to sub-clause (3) the Council can grant consent to development of the site provided the floor space does not exceed 3:1 and it is satisfied that “...the development will be compatible with the desired future character of the zone in terms of building bulk and scale.”

Under this Part, a floor space ratio of 3:1 or 2301m² is permissible on this corner site. The proposal at 7 storeys has a floor space ratio of 3.79:1 or 2908m² and exceeds the maximum floor space ratio pursuant to the bonus offered by this Part by 606m².

The B2 zone objectives have been stated earlier. The last objective of the zone refers to the desired future character of the neighbourhood which is specified in WDCP 2015 Part D5.4.5 (Bay Street - Centre) and which have been considered earlier.

The development exceeds the 0.5:1 bonus offered under this Part. The proposal, for reasons already assessed above, fails to satisfy the underlying objective of the Part and is considered to be an over-development of this prominent corner site.

15.3.5 Exceptions to Development Standards (Part 4.6)

- **Departure**

For reasons outlined above, the proposal fails to comply with the Height of buildings, Floor space ratio and Exceptions to floor space ratio (Area 1 – Double Bay) development standards prescribed by Part 4.3, 4.4 and 4.4A respectively of this Plan.

- **Objectives**

The objectives of this clause are to provide flexibility in applying the development standard and to achieve better outcomes for and from the development in particular circumstances.

- **Written Request**

The Consent Authority must consider a written request from the applicant seeking justification of the contravention of the development standard. The request must demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify the contravention.

The written requests form part of the submitted documentation.

- **Assessment**

Council must be satisfied that the written request from the applicant adequately justifies the contravention. Furthermore, the Council must be satisfied the proposal is in the public interest because it is *consistent with the relevant objectives of the particular standard and the zone* where the development is located.

The Department issued Planning Circular No.PS18-003 which notified Councils of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of

the Standard Instrument...” Clause 64 of the EPA Regulations provides that Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

The proposal is assessed against the *Objectives of the Development Standards* prescribed by Part 4.3 (*Height of buildings*), 4.4 (*Floor space ratio*) and 4.4A (*Exceptions to floor space ratio {Area 1-Double Bay}*) as follows:

Height of Buildings (Part 4.3)

(a) To establish building heights that are consistent with the desired future character of the neighbourhood

For reasons already discussed above, the proposal fails to satisfy this objective.

(b) To establish a transition in scale between zones to protect local amenity

For reasons already discussed above, the proposal fails to satisfy this objective.

(c) To minimise the loss of solar access to existing buildings and open space

For reasons already discussed above, the proposal fails to satisfy this objective.

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

Existing views afforded to properties to the south that are elevated above the subject site have their existing views of Sydney Harbour and the land/water interface compromised by the excessive and non-compliant height of the development. Further assessment is provided on view loss below.

For this and other reasons already discussed above, the proposal does not minimise impacts on the amenity of existing adjoining residential development with regard to views, privacy, sense of enclosure and scale and bulk.

The proposal fails to satisfy this objective.

(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas

The proposal satisfies this objective.

Floor Space Ratio (Part 4.4)

The relevant objective of this control states:

...(b) To ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

For reasons already discussed above, the proposal fails to satisfy this objective.

Exceptions to floor space ratio (Area 1 – Double Bay) (Part 4.4)

The relevant objective of this control states in part:

...(1) ...to encourage the development of prominent corner buildings in Double Bay.

Subclause (3) is paraphrased as follows:

“...development consent may be granted ...if ...the development will be compatible with the desired future character of the zone in terms of building bulk and scale.”

For reasons already discussed above, the proposal fails to satisfy this objective.

Objectives of the Zone (B2 Local Centre)

The objectives for this Part have been stated earlier (Section 15.2.1).

For reasons already discussed, the proposal fails to satisfy this objective.

Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ established potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.

More recent cases (*Four2Five Pty Limited v Ashfield Council [2013] NSWLEC* and *Moskovitch v Waverely Council [2016] NSWLEC1015*) have indicated that under clause 4.6, in addition to compliance with the objectives of the development standard and the zone, the applicant must demonstrate sufficient environmental planning grounds for the variation.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard

For reasons already discussed, the proposal fails to achieve the objectives underpinning the development standards.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The objectives of the standards are relevant to the development as they determine the relative impacts associated with its proposed height, scale and bulk. For reasons already discussed, compliance with the standards are considered necessary in this instance.

Test 3 - The underlying objective of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Compliance with the standards would not defeat the objective of the standard. The proposed development disregards the relevant height and floor space controls providing a building envelope that is inconsistent and contextually inappropriate with the existing or envisaged commercial centre it forms a part of and the residential precinct it is attached to.

For reasons already discussed, compliance is reasonable in the circumstance.

Test 4 - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or

In addition to the Clause 4.6 variations, the applicant has also put forward a legal opinion by Mr Galasso of Counsel (attached as **Annexure 12**) indicating that Council has abandoned its height of buildings and floor space ratio development standards.

Council has considered this legal opinion and the examples given to support its argument. This opinion has been reviewed by Council's lawyers. Having done so and having given detailed consideration to the examples relied upon by the applicant, it is considered that the applicant is not correct in concluding that the development standards have been abandoned.

Council has concluded that it has not abandoned its controls for the following reasons:

- There is no planning history to suggest that the current FSR and Height development standards will cease to apply.
- There is no evidence to suggest Council will alter the current FSR and Height development standards.
- The height and FSR development standards vary in different parts of the centre and in particular to corner sites and those directly adjoining residential zones.
- There are examples of development which exceed the height and FSR controls within the commercial area. Some of these are in Bay Street, which having regard to the level of exceedance and the nature of the development involved, does not support a finding of abandonment.

Test 5 - The zoning (not the development standard) is unreasonable or inappropriate.

For reasons already discussed, compliance is reasonable and appropriate in the circumstance.

Environmental planning grounds which justify the contravention of the standard

In regard to this consideration, it is not sufficient to support a variation to a development standard by merely pointing to an absence of environment harm (*Hooker Corporation Pty Ltd v Hornsby Shire Council* [1986] 130 LGERA 438; *Memel Holdings Pty Ltd v Pittwater Council* [2000] NSWLEC 106; *Winten Property Group Ltd v North Sydney Council* [2001] NSW LEC 46). Therefore it is necessary to demonstrate that the public interest is satisfied in the circumstances of the case.

For reasons already discussed, there is insufficient environmental planning grounds to justify contravening the development standards in this instance.

- **Conclusion**

The relevant planning controls and in particular the key strategy for the Double Bay Commercial Centre is to: "...Enhance the public domain of Double Bay by applying a co-ordinated approach to the public domain and streetscape."

The non-compliances with the development standards do not result in a better outcome for the centre because the development encompasses a height, bulk and scale that is far in excess of any

existing development in the immediate vicinity and has an envelope well in excess of the desired future character for the centre.

Additionally, the non-compliances with the height and FSR development standards result in a building that causes adverse impacts on the amenity of the centre and the residential precinct immediately adjoining because:

- It is inconsistent and incompatible with the existing and the desired future built form, streetscape and village character of the centre;
- The built form does not respond to the scale and civic importance of Guilfoyle Park and erodes and encloses the spatial qualities of this public open space at street level;
- The proposal does not provide an appropriate transition to, and is inconsistent and contextually inappropriate with, the existing lower scale residential development immediately adjoining;
- It does not minimise negative impacts on the amenity of adjoining and neighbouring residents with respect to scale, bulk, solar access and sense of enclosure;
- It does not minimise impacts on existing views of Sydney harbour.

The written submissions from the applicant have not adequately demonstrated that the contravention of the *Height of buildings*, *Floor space ratio* and *Exceptions to floor space ratio (Area 1 – Double Bay)* development standards prescribed by *Clause 4.3, 4.4 and 4.4A* respectively are justified pursuant to the relevant matters for consideration prescribed by this clause.

Furthermore, the proposal is not in the public interest and is inconsistent with the objectives of the development standard and those applicable to the development within the zone. Accordingly, departure from the development standards is not justified in this instance nor has the applicant demonstrated sufficient environmental grounds for the variation.

15.4 Miscellaneous Provisions (Part 5)

15.4.1 Development within the Coastal Zone (Part 5.5)

The proposal satisfies the relevant criteria prescribed by this Part.

15.4.2 Heritage Conservation (Part 5.10)

The subject sites and buildings thereon are not listed on the State Heritage Register, have not been identified as a heritage item, are not a potential heritage item nor are they within or located adjacent to a Heritage Conservation Area. Demolition of the existing buildings is therefore supported.

The proposal satisfies the relevant criteria prescribed by this Part.

15.5 Additional Local Provisions (Part 6)

15.5.1 Acid sulphate soils (Part 6.1)

The subject sites are located within Land Class 2 of the Acid Sulfate Soils Map which applies to any works below the natural ground level.

An Acid Sulfate Soils Management Plan (ASSMP) was undertaken by Douglas Partners (Report No 85575.01 dated July 2017).

This report concludes the land will require further testing due to existing buildings that limits extensive ground testing. Notwithstanding, the sites can be made suitable for the proposed development subject to implementation of an ASSMP. This Plan will enable appropriate management of the potential risks associated with any potential on-site ASS including risks to structures, surrounding surface water bodies and groundwater. These measures can be imposed by conditions.

In light of the above, and subject to appropriate conditions, the proposal satisfies the relevant criteria prescribed by this part.

15.5.2 Earthworks (Part 6.2)

There are no mitigating circumstances associated with the proposed excavation that will detrimentally impact the amenity of adjoining residents, the environment, the water table or any adjoining structures. Standard conditions can be applied to mitigate any expected impacts associated with the excavation and construction process including vibration monitoring, submission of dilapidation reports, dust control and the like.

The proposal satisfies the relevant criteria prescribed by this part.

15.5.3 Flood planning (Part 6.3)

Council's Drainage Engineer has reviewed the proposal and indicates that the proposal can satisfy the terms of this part subject to the imposition of conditions.

The proposal satisfies the relevant criteria prescribed by this Part.

16. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

NOTE: The provisions of SEPP 65 Clause 6(1) and (2) prescribe that in the event of an inconsistency between the SEPP and another environmental planning instrument the SEPP prevails to the extent of the inconsistency.

Part A - Introduction and Administration

16.1 About this DCP (A1.1)

16.1.1 Objectives of this Plan (A1.1.5)

As assessed above, the proposal fails to satisfy the relevant objectives prescribed by the WLEP and accordingly fails to satisfy the key objective of this Plan which states: ...O3 – *To achieve the objectives contained in WLEP 2014.*

Part D – Business Centres

16.2 Double Bay Centre (Chapter D5)

16.2.1 Introduction (D5.1)

- **Objectives (D5.1.3)**

The proposed development is permissible and is encouraged by this DCP. However, the key objectives of this part states:

- “...O6 To preserve and enhance the diversity of uses in the Double Bay Centre.*
- O7 To ensure new development is compatible with the existing built form, and streetscape and village character.*
- O8 To encourage view sharing and individual privacy.”*

Based on the non-compliance with the maximum floor space and height controls, the proposal subsequently results in a building that excessively exceeds the envelope controls prescribed by this DCP. The proposal does not preserve or enhance the existing commercial/office. In this regard and for reasons already discussed, the proposal fails to satisfy these key objectives.

16.2.2 Urban structure (D5.3)

- **Key strategies for the Double Bay Centre**

This proposed shop-top housing development, with its active street frontages and residential accommodation is encouraged and satisfies many of the key strategies.

However, the height, scale and massing of the proposed development greatly exceeds the relevant prescribed envelope controls. For reasons already considered, the proposal fails to satisfy the relevant key strategies which are summarised in part as follows:

“...Enhance and improve the public domain and the provision of public facilities

- a) Enhance the public domain of Double Bay by applying a coordinated approach to the public domain and streetscape...*

...Ensure that the centre maintains its commercial viability and competitive position within the Sydney Retail market

- a) Foster the existing mix of uses of the centre such as hotels, retail and commercial and upper level residential...*

...Develop the particular qualities of different parts of the centre

- ...d) Reinforce the Bay Street promenade and vista to the harbour foreshore...*
- ...f) Reinforce the urban space at the end of Guilfoyle Park, using built form controls...*

...Improve Double Bay's built form to provide appropriate definition to the public domain

- a) Provide direction and certainty of outcome in relation to built form to ensure:
 - a coherent street scale
 - compatibility with existing urban fabric*

- a variety of building types
- a high level of environmental amenity...
- ...c) Ensure that new development is compatible with the existing built, streetscape and village character
- d) Establish building envelopes that define building height and building lines (at lower and upper levels) to provide coherent street definition...
- ...g) Encourage view sharing and privacy...”

16.2.3 Street character (D5.4)

An assessment of the desired future character prescribed by this part for Bay Street (Centre) has been undertaken above (see SEPP 65 & WLEP 2014).

Based on the assessment undertaken, the proposal fails to satisfy these objectives as stated earlier.

16.2.4 Built form envelopes: Control drawings (D5.5)

• Compliance Table (Non-compliances are highlighted)

Combined Site Area: 1111.8m² - Site Area No.30-36 Bay Street (767.2m ²) - Site Area No.2 Guilfoyle Avenue (344.6m ²)	Proposed	Control	Complies
Maximum Height – Storeys & (m)	7 & (24.11)	5 & (18.1) (Bay St) 4 & (14.7) (Guilfoyle Ave)	No
Occupiable Area (%) - Levels 1-5 - Levels 6 & 7	100% 100%	100% n/a*	Yes n/a*
Build-to-line - Levels 1 & 2 - Levels 3 & 4 - Level 5 - Levels 6 & 7	100% 100% 100% 100%	100% 50-100% 50-100% n/a*	Yes Yes Yes n/a*
Setback (Bay Street) - Level 1 - Level 2 - Level 3 - Level 4 - Level 5 - Level 6 & 7	0 0 0 0 0 2.7	2.4 0 0 0 2.4 n/a*	No Yes Yes Yes No n/a*
Setback (Guilfoyle Avenue) - Level 1 - Level 2 - Level 3 - Level 4 - Level 5 - Level 6 & 7	0 0 0 0 0 2.7-4.6	2.4 0 0 0 2.4 n/a*	No Yes Yes Yes No n/a*
Setback (Western Side boundary) - Ground floor - Levels >1	0 0	0 1.8	Yes No**
Building Articulation (Bay Street) - Ground level (m) - Levels 2-5 (%)	100% Up to 40%	100% Up to 40%	Yes Yes
Landscaped Areas (m ²)	0	140	No**
Minimum floor-to-floor heights (m) - Level 1 - Levels >2	4.2 3.1	4 3.1	Yes Yes
Maximum building depth Levels 3-5 (m)	17	12	No**

Combined Site Area: 1111.8m² - Site Area No.30-36 By Street (767.2m ²) - Site Area No.2 Guilfoyle Avenue (344.6m ²)	Proposed	Control	Complies
Colonnades (m) - Width - Soffit height	None provided Proposed awning	2.4 3.6	No
Maximum residential access frontage (m)	9% (3.4)	20% (7.6)	Yes
Minimum setback of windows/balconies (m)	0	9 & 12	No**
Minimum Private Open Space - Small dwelling (<60m ²) - Medium dwelling (60-90m ²) - Large dwelling (>90m ²) - Preferred & Minimum depth (m)	0 >12 >16 >2.4 & >1.8	8 12 16 2.4 & 1.8	No** Yes** Yes** Yes**
Cross-ventilation to dwellings	>80%	80%	Yes**
Hours of Solar Access to <i>habitable windows</i> & <i>private open space</i> of adjoining properties between 9am and 3pm on 22 June	<3 & <2	3 & 2	No
Hours of Solar Access to <i>habitable windows</i> & <i>private open space</i> of development between 9am and 3pm on 22 June	<3 & <2	3 & 2	No**
Maximum driveway width (m)	5.5	6	Yes

* **Proposed Levels 6 & 7**
These levels of the development extend outside the permitted envelope controls.

** **SEPP 65**
These controls are superseded by SEPP 65 as detailed and assessed above.

16.2.5 Development Controls (D5.6)

- **Use (5.6.2)**
For reasons already discussed above, the proposal fails to satisfy the relevant criteria prescribed by this control.
- **Building envelopes (5.6.3.1)**
The proposal fails to comply with the prescribed envelope controls as noted in the Compliance Table above. It results in a building form that:
 - Fails to meet the existing or desired future character for Bay Street (Centre).
 - Compromises the amenity of adjoining properties and the public domain in terms of its scale, bulk, sense of enclosure, solar access and privacy.

The proposal fails to satisfy the relevant objective of this control which states:

“O1 Development should contribute to the desired future character of streetscapes with appropriate and consistent building forms.”

- **Height (5.6.3.2)**
The proposal fails to comply with the prescribed height controls as noted in the Compliance Table above. It results in a building form that:
 - Significantly exceeds the height requirement envisaged for Bay Street.

- Does not provide an appropriate transition to the residential area it is attached to.

The proposal fails to satisfy the relevant objective of this control which states:

“O1 Encourage buildings to achieve the heights along street and lane frontages described by the control drawings.”

- **Building articulation (5.6.3.3)**

The proposal satisfies the relevant criteria prescribed by this control.

There are no controls specified for Levels 6 & 7 but they nevertheless are consistent in their treatment and detail with the lower levels.

- **Setbacks (5.6.3.4)**

The proposal fails to comply with the prescribed setback controls to Bay Street and Guilfoyle Avenue as well as the setbacks to the adjoining residential zone as noted in the Compliance Table above.

The height of the front street wall to Guilfoyle Avenue, the failure to provide a colonnade at ground level and the lack of front setback at Level 5 fails to satisfy key Objective O1 of this part which states: *“...Encourage consistent building lines to provide coherent streetscapes...”*

The side and rear setbacks of the development have been assessed above.

- **Corner buildings (5.6.3.5)**

The key objective of this control is to *“...Encourage building massing and articulation that creates strong corner buildings.”*

For reasons already outlined, the proposal fails to satisfy the relevant criteria prescribed by this control.

- **Architectural resolution (5.6.3.6)**

The proposal satisfies the relevant criteria prescribed by this control.

- **Roof design (5.6.3.7)**

The proposal satisfies the relevant criteria prescribed by this control.

- **Heritage items and character buildings (5.6.3.8)**

The proposal satisfies the relevant criteria prescribed by this control.

- **Colonnades (5.6.4.2)**

The preamble to the control identifies the significance of Guilfoyle Park on Bay Street as it *“...makes a substantial contribution to the ambience of the centre.”* In this regard, the preamble goes on to state that: *“...This quality could be enhanced through appropriate built form which interprets the park’s civic importance in its address to the park.”*

The provision of an awning in-lieu of the required colonnade reduces the spatial relationship of this important and only green public space in the centre. The proposed development at ground level does not assist in widening the public domain and improve the amenity for the public. The

proposal fails to satisfy the relevant criteria prescribed by this control and in particular key Objective O1 which states:

“...Encourage colonnaded buildings ...which interpret Guilfoyle Park’s civic importance and establishes a spatial relationship between the park and the buildings which address it.”

- **Ground floor active lane frontage (5.6.4.5)**

The proposal satisfies the relevant criteria prescribed by this control.

- **Visual & Acoustic privacy (5.6.5.1 & 5.6.5.2)**

The setback controls applicable to the residential component of the development, directly correlated to the impacts on privacy, are overridden by the SEPP 65 provisions which have been assessed above.

The proposal nevertheless fails to satisfy the relevant criteria prescribed by this control.

- **Landscaped areas (5.6.5.3)**

For reasons already outlined, providing deep soil landscaped area on the site is not considered necessary in this urban environment. In relation to the existing trees, Council’s Trees Officer comments on the proposal states in part:

“...Tree 1 which is located within the Royal Oak Hotel site...is in decline ... there are no issues with the removal of this tree...”

...The proposed pruning of Tree 2 (also within the Royal Oak Hotel site) ...is unlikely to result in any severe aesthetic disfigurement of the tree or result in tree decline...”

- **Private open space (5.6.5.4)**

This issue has been addressed under the provisions of SEPP 65 which supersede these controls.

- **Solar access (5.6.6.1)**

In relation to providing solar access to the residential component of the development, this has been addressed under the provisions of SEPP 65 which supersede these controls.

The proposal does not provide the required solar access to the existing dwelling immediately adjoining to the rear (No.3 South Avenue). Increasing the side and rear setback of the development to be compliant with the SEPP 65 ADG provisions, particularly on its western and southern sides, would improve solar access afforded to this adjoining residential property.

For reasons outlined, the proposal fails to satisfy the relevant criteria prescribed by this control.

- **Cross-ventilation (5.6.6.2)**

This issue has been addressed under the provisions of SEPP 65 which supersede these controls.

- **Geotechnology and hydrogeology (5.6.7)**

The issue of Site Contamination and Acid Sulfate Soils is assessed under the relevant heads of consideration in this report.

The balance of the proposal satisfies the relevant criteria prescribed by this control.

- **On-site parking (5.6.8.1)**

This control requires that parking must comply with the terms of Chapter E1 of this DCP.

The balance of the proposal satisfies the relevant criteria prescribed by this control.

See below for further assessment.

- **Vehicular access (5.6.8.2)**

The proposal satisfies the relevant criteria prescribed by this control.

- **Site facilities (5.6.8.4)**

The issue of waste storage facilities is assessed below.

The balance of the proposal satisfies the relevant criteria prescribed by this control.

Part E - General Controls for All Development

16.3 Parking and Access (Chapter E1)

16.3.1 Introduction (E1.1)

- **Objectives (E1.1.3)**

The proposal satisfies the relevant objectives prescribed by this Part.

16.3.2 Residential and non-residential parking (E1.4 to E1.7)

The development provides 24 basement car spaces for the residential component. The proposal results in a shortfall of 5 spaces from the maximum parking requirement.

The proposed parking provision includes 9 dual use car spaces at ground level which are to cater for retail parking during the retail operating hours and reverts to residential visitor parking outside these operating hours.

A variation to the required parking generation rate is discussed under the relevant heading immediately below.

16.3.3 Variations to the parking generation rates (E1.8)

This control enables the consent authority to support a variation to providing the maximum parking for this development.

A Transport Report ("TR") has been prepared by Colston Budd Roger & Kafe Pty Ltd addressing the deficiency in parking. The TR has been reviewed by Council's Traffic Engineer who concludes that a variation to the shortfall in reaching the maximum parking on the site may be considered favourable because:

- The existing land use already generates a similar parking deficiency.
- The Edgecliff Bus/Rail Interchange is a main transportation hub that is less than 1km from the site.
- There are bus routes on New South Head Road and Manning Road all in close proximity to the site.

- The Double Bay Wharf with access to Sydney Ferries is less than 500m from the site.
- There are 4 public car parks in the Centre that could be utilised by customers and visitors of the development.
- The Double Bay Centre provides infrastructure to cater for the demands of local residents with regard to food, entertainment and other services.
- The parking demand created by the retail components of the development is highly likely to overlap with existing retail and commercial activity in the centre.
- The site is in close vicinity of existing car sharing services.
- Council's residential car parking requirements are a maximum control not a minimum.
- This location appeals to residents and tenants who do not own, or wish to own a car.

In relation to the traffic generation of the development, Council's Traffic Engineer's comments state:

"...The traffic generation will in the worst scenario, stay at a comparable level post-development and thus will not result in unacceptable adverse traffic impact on the existing road network."

Based on this expert advice, a variation to providing the maximum parking on-site is supported.

Council's Traffic Engineer comments indicate that the 2 bicycle spaces for retail customers in the western footpath area of Bay Street outside the property boundary are not supported. A minimum of 39 resident bicycle parking spaces, 3 motor bike parking spaces and a minimum of 4 visitor bicycle parking spaces for the retail component should be provided on-site. A retail visitor parking space should be reassigned to the residential component of the development. These recommendations can be conditioned should consent be granted.

16.3.4 Off-street loading and servicing facilities (E1.10)

This control indicates 1 off-street loading and servicing space may be required for the commercial component of the development. However, the existing loading zones in close proximity to the site are sufficient to cater for the development. Council's Traffic Engineer supports this position.

16.4 Stormwater and Flood Risk Management (Chapter E2)

The proposal satisfies the relevant criteria prescribed by this control and/or can be addressed by conditions.

16.5 Contaminated Land (Chapter E4)

This Chapter identifies requirements for applicants when proposing a development that it must be consistent with the provisions of SEPP 55 for managing contaminated land.

The provisions of SEPP 55 have been assessed above.

The proposal nevertheless satisfies the relevant considerations prescribed by this part and can be addressed by condition.

16.6 Waste Management (Chapter E5)

The proposal satisfies the relevant criteria prescribed by this part and/or can be addressed by Council's standard conditions.

16.7 Sustainability (Chapter E6)

The proposal satisfies the relevant criteria prescribed by this part and/or can be addressed by Council's standard conditions.

16.8 Adaptable Housing (Chapter E8)

These controls prescribe that at least 10% of the dwellings must be adaptable housing. That is, 4 apartment must be made adaptable.

The proposal satisfies the relevant criteria prescribed by this part.

17. DRAFT AMENDMENTS TO POLICIES AND PLANS

There are no draft amendments applicable to this development.

18. SECTION 94 & 94A CONTRIBUTION PLANS

Both Contribution Plans are applicable. However, the S94 Contribution Plan was developed to fund an additional half level on top of the existing public car parking facility in Cross Street, Double Bay. Council is no longer pursuing this development option and therefore the contribution under this plan is no longer relevant. Section 94B(1) of the EPA Act 1979 states in part that: "...a consent authority may impose a condition under s94 only if it is ...in accordance with a contribution plan."

On this basis, a levy pursuant to Section 94A is recommended to be applied because it has a broader application including community facilities, environmental works, Council property, public infrastructure works, public open space and business centres and harbourside works.

The contribution under this plan is calculated as follows:

Development Type	Levy (percentage of proposed cost of development)	Cost of works + GST
All developments	1%	\$24,441,098.00

The total contribution under the provisions of this plan is **\$244,410.98**

Should development consent be issued, a contribution pursuant to Section 94A would apply and can be enforced by condition.

19. APPLICABLE ACTS/REGULATIONS

19.1 Demolition of Structures

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the development to comply with Australian Standard AS 2601-2004: The demolition of structures. Compliance with this requirement can be enforced by condition.

19.2 Fire Safety

An annual fire safety schedule is required to be submitted and compliance with this requirement can be enforced by condition.

19.3 Building Code of Australia

The proposal is required to comply with the relevant provisions of the Building Code of Australia. Compliance with these requirements can be enforced by condition.

20. THE LIKELY IMPACTS OF THE PROPOSAL

20.1 Views

A number of submissions have indicated view loss as a concern. Some of these properties are located on the higher side of Double Bay on New South Head Road that overlook the commercial centre. Concerns were also expressed about potential loss of district views from units within the Cosmopolitan Centre immediately opposite on Bay Street.

The WDCP has no control or criteria for consideration in relation to view loss except for a reference in the objectives which is “...to encourage view sharing”. Notwithstanding, the impact on views is a relevant consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

In assessing the view impact, the Land & Environment Court, in Tenacity Consulting Pty Ltd v Warringah Council (2004) adopted **planning principles** for assessing view impacts. These steps and assessment are as follows:

- ***What is the value of the view?***

The concerns expressed primarily relate to loss of Sydney Harbour and district views.

- ***From what part of the properties are the views obtained?***

From No.337 New South Head Road, the units are afforded views from windows and balconies with a gauge on the type of views as follows:



(Objectors Photo from Level 4 balcony of No.337 NSH Rd)

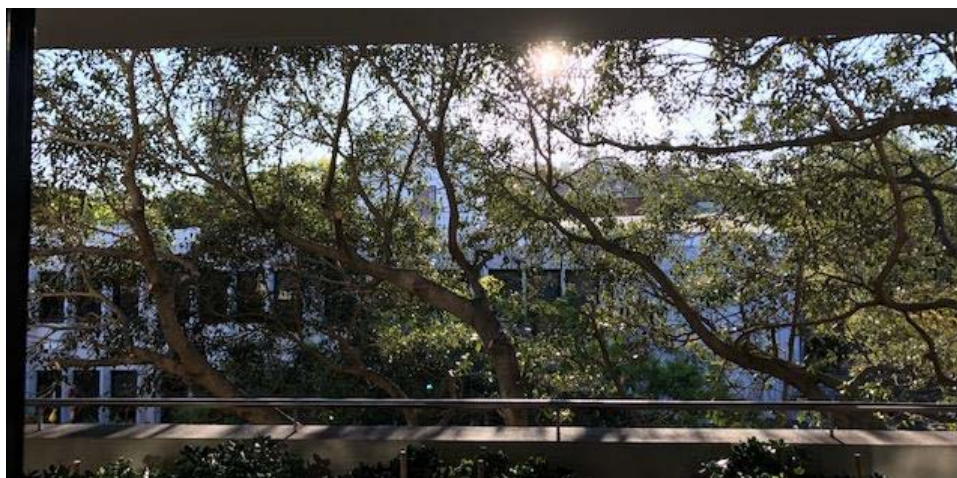


(Objectors Photo from Level 5 balcony of No.337 NSH Rd)

From No.2-22 Knox Street, the units are afforded views from windows and balconies to the west with a gauge on the type of views as follows:



(Objectors Photo from West facing balcony 5A/2-22 Knox Street)



(Objectors Photo of West facing balcony 5B/2-22 Knox Street)

- ***What is the extent of the impact?***

In regard to the impacts from units at No.337 New South Head Road, the proposed development erodes some of the existing iconic Sydney Harbour water views. The extent of impact, based on the totality of views afforded from these properties, would be minor.

In regard to the impacts from units at No.2-22 Knox Street, the proposed development would erode some of the existing district views. The extent of impact, based on the totality of views afforded from these properties, would be minor.

- ***What is the reasonableness of the proposal that is causing the impact?***

The Court poses two questions, the first question relates to whether a non-compliance with one or more planning controls results in view loss.

The building excessively exceeds the height and FSR controls. The height of the development at RL26.97, is 3.7m higher than the Cosmopolitan building at RL23.24 which is immediately opposite to the east and which is one of the largest buildings in the Centre.

The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views. As stated earlier, the view loss is caused by a building that is excessive in its height and scale and is a result of the non-compliances with the site specific envelope controls prescribed by the WDCP.

Having regard to the extent of view loss, the proposal does not satisfy the underlying objective of the Height of buildings development standard which is to “... *minimise the impacts on view loss on nearby properties from disruption of views.*”

On this basis, the degree of the view impact, though minor, is unreasonable in this circumstance and the proposal fails to satisfy the principle established by the Court.

20.2 Wind Tunnel Effect

The height of the development and the recessed upper levels are unlikely to detrimentally impact to the amenity of pedestrians with regard to wind tunnel effect.

20.3 Retail hours

The proposed hours of use of the retail component of the development, being 6am-10pm Monday to Saturday and 7am-10pm Sunday, is consistent with other existing retail uses in the centre. The proposed hours of operation are unlikely to detrimentally impact on the amenity of adjoining residents with respect to noise or anti-social behaviour.

20.4 Voluntary Planning Agreement (VPA)

A VPA has been submitted with the subject application with an offer of \$500,000.00 for projects identified in Council's Double Bay Public Domain Strategy.

Should the Planning Panel consider that the development be approved, the planning agreement will need to be considered by Council. The Planning Panel may wish to comment on whether it considers the planning agreement to be in the public interest.

20.5 General

All other likely impacts have been addressed elsewhere in the report or are considered to be satisfactory and not warrant further consideration.

21. THE PUBLIC INTEREST

The proposal is not in the public interest.

22. DISCLOSURE STATEMENTS

Under Section 147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any Councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

23. CONCLUSION

The assessment of the development against the relevant considerations under s4.15 of the *Environmental Planning and Assessment Act 1979*, State Environmental Planning Policy 65, Woollahra Local Environmental Plan 2014 and the Woollahra Development Control Plan 2015 concludes that the proposal is an overdevelopment of the site and is recommended for **REFUSAL**.

24. RECOMMENDATION: Pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979

PART A

THAT the Sydney Eastern City Planning Panel, as the consent authority, refuse development consent to DA359/2017/1 for demolition of existing structures and construction of a 7 storey mixed use development containing 39 residential units (5 x studios, 12 x 1 bed, 18 x 2 bed & 4 x 3 bed), 3 ground level retail spaces (proposed hours of 6am-10pm Mon-Sat and 7am-10pm Sun) with ground level parking (9 cars) and a basement car park accessed by a car lift (24 cars) and the removal of a tree at the rear of 28 Bay Street (the proposal also includes a Voluntary Planning Agreement with an offer of \$500,000 for projects identified in Council's Double Bay Public Domain Strategy) on land at 30-36 By Street and 2 Guilfoyle Avenue DOUBLE BAY, for the following reasons:

1. Building Height

The proposed development exceeds the maximum height development standard and is inconsistent and incompatible with the existing built form, streetscape and village character of the centre.

Particulars

- a) The proposed roof height of the development at 24.11m fails to comply with the maximum 18.1m and 14.7m height limit development standards applicable to the sites prescribed by Woollahra Local Environmental Plan 2014 (WLEP). The written request submitted by the applicant does not adequately demonstrate that the contravention of the development standard is justified pursuant to the relevant matters for consideration prescribed by clause 4.6 of the WLEP.

- b) The proposed development fails to achieve the desired future character objectives for the Bay Street (Centre) in that it does not provide a built form that responds to the scale and civic importance of Guilfoyle Park and fails to provide appropriate definition of this space.
- c) The proposed development is contrary to the strategic approach for the redevelopment of the centre that was undertaken in a planned and co-ordinated way that was tailored for each site taking into considerations its unique characteristics.
- d) The proposal is 2-storeys over the prescribed height control and does not provide a coherent streetscape definition on either Guilfoyle Avenue or Bay Street.
- e) The proposed development does not provide an appropriate transition to, and is inconsistent and contextually inappropriate with, the existing residential development immediately adjoining to the south and west that has a maximum height limit of 9.5m.
- f) The proposed development does not minimise negative impacts on the amenity of the adjoining and neighbouring residents at No.3 South Avenue to the rear with respect to scale, bulk, solar access and sense of enclosure.
- g) The proposed development does not minimise impacts on existing views from properties at No.337 New South Head Road Double Bay.
- h) The proposal fails to satisfy the following provisions:

State Environmental Planning Policy 65:

Principle 1: Context and neighbourhood character.

Principle 2: Built form and scale.

Principle 9: Aesthetics.

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(a), (g) and (l).

Part 2 – Land Use Table, Zone B2 Local Centre, Objectives of zone.

Part 4 – Clause 4.3(1)(a), (b), (c) and (d); and (2).

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3.

Part D5.1.3 – Objectives O7 and O8.

Part D5.3.2 – Enhance and improve the public domain and the provision of public facilities – Strategy a); and Improve Double Bay's built form to provide appropriate definition to the public domain – Strategy a), c), d) and g).

Part D5.4.5 – Objectives b) and c).

Part D5.6.3.2 – Objective O1 and Control C1.

Part D5.6.6.1 – Objective O1 and Control C3.

2. Floor Space

The proposed development exceeds the maximum floor space ratio and subsequently creates a building volume that is inconsistent and incompatible with the existing built form, streetscape and village character of the centre.

Particulars

- a) The proposal has a floor space ratio of 3.79:1 for No.30-36 Bay Street and 2.64:1 for No.2 Guilfoyle Avenue and exceeds the maximum Floor Space Ratio of 2.5:1 and 3:1 which are development standards prescribed by Clause 4.4 and 4.4A of

WLEP 2014. In this regard, the written submission does not adequately demonstrate that the contravention of the floor space ratio development standard prescribed by Clause 4.4 and 4.4A is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

- b) The proposed development fails to achieve the desired future character objectives for the Bay Street (Centre) in that it does not provide a built form that responds to the scale and civic importance of Guilfoyle Park and erodes and encloses the spatial qualities of this public open space.
- c) The proposed development is contrary to the strategic approach for the redevelopment of the centre that was undertaken in a planned and co-ordinated way that was tailored for each site taking into considerations its unique characteristics.
- d) The scale and bulk of the development is incompatible with any existing developments in this locality and is a storey higher than one of, if not the, largest building in the centre, being the Cosmopolitan building at No.2-22 Knox Street.
- e) The scale and bulk of the development does not provide a coherent streetscape definition on either Guilfoyle Avenue or Bay Street in-line with Council's envelope controls.
- f) The proposed development does not provide an appropriate transition to the existing residential developments immediately adjoining to the south, No.3 South Avenue and to the west, No.4 Guilfoyle Avenue.
- g) The proposed development does not minimise negative impacts on the amenity of the adjoining and neighbouring residents at No.3 South Avenue to the rear with respect to scale, bulk, solar access and sense of enclosure.
- h) The proposed development does not minimise impacts on existing views from properties at No.337 New South Head Road Double Bay.
- i) The proposal fails to satisfy the following provisions:

State Environmental Planning Policy 65:

Principle 1: Context and neighbourhood character.

Principle 2: Built form and scale.

Principle 9: Aesthetics.

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(a), (g) and (l).

Part 2 – Land Use Table, Zone B2 Local Centre, Objectives of zone.

Part 4 – Clause 4.4 (1)(b) and 2; and Clause 4.4A(3)

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3.

Part D5.1.3 – Objectives O7 and O8.

Part D5.3.2 – Enhance and improve the public domain and the provision of public facilities – Strategy a); and Improve Double Bay's built form to provide appropriate definition to the public domain – Strategy a), c), d) and g).

Part D5.4.5 – Objectives b) and c).

Part D5.6.3.2 – Objective O1 and Control C1.

Part D5.6.6.1 – Objective O1 and Control C3.

3. Clause 4.6 Variation

The consent authority is of the opinion that the written requests from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the *Height of buildings*, *Floor space ratio* and *Exceptions to floor space ratio (Area 1-Double Bay)* development standards under Clauses 4.3, 4.4 and 4.4A respectively have not adequately demonstrated that compliance with the development standards are unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental grounds to justify contravening the development standard.

4. Setbacks

The proposed development should be refused because it fails to provide adequate setback to protect the amenity of adjoining residential property.

Particulars

- a) The proposal is constructed to the rear southern boundary at ground level and setback 6m from levels 1 to 7.
- b) The proposal is constructed to its western boundary up to level 5 and setback 7.7m on levels 6 and 7.
- c) The proposed setbacks is insufficient based on the Design Criteria prescribed by the Apartment Design Guide ('ADG') which requires a setback of 9m up to level 4 and 12m on levels 5, 6 and 7 from both adjoining residential boundaries.
- d) The proposed setbacks provide insufficient separation
- e) The lack of separation detrimentally impacts the amenity of these adjoining properties with respect to scale, bulk and sense of enclosure to adjoining residential property at No.3 South Avenue and No.4 Guilfoyle Avenue to the west.
- f) The proposed setback, particularly on the western side, does not allow solar access to penetrate to the rear private open space of No.3 South Avenue.
- g) The proposed setback does not provide a satisfactory contextual transition of the building form with the lower scale of residential development immediately adjoining to the south and west.
- h) The proposed setbacks results in a building form that does not achieve the desired future character for the Double Bay centre.
- i) The proposed setback compromises the privacy of the both adjoining residents and the future residents of the subject development.
- j) The proposal fails to satisfy the following provisions:

Apartment Design Guide:

Objective 3F-1 and Design Criteria 1 and Figure 3F.5
Objective 4H-1

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(g) and (l).

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3.

Part D5.1.3 – Objectives O7 and O8.

Part D5.3.2 – Improve Double Bay's built form to provide appropriate definition to the public domain – Strategy a), c), d) and g).

Part D5.6.3.1 – Objective O1 and Controls C1 and C4.

Part D5.6.3.4 – Objective O3 and Control C3 and C4.

5. Use

The removal of the existing commercial/office uses from this site and the lack of adequate replacement in the proposed development is detrimental to the centre and in particular the loss of employment opportunities.

Particulars

- a) The composition of the existing building that is to be demolished is 4 storeys with the ground floor primarily of retail uses. Immediately above are 3 storeys and more than 1800m² of commercial/office uses. The existing commercial/office uses contain approximately 30 business suites.
- b) These existing business suites provide employment opportunities, not only to employers and employees, but also clients and other workers that interact with these uses be it couriers, delivery drivers, cleaners, technicians etc.
- c) The removal of these existing commercial/office uses from this site is to the detriment of the centre and in particular the loss of employment opportunities.
- d) The commercial/office uses and associated workers creates a daytime vibrancy that assists in sustaining other retail uses in the centre.
- e) The proposal fails to satisfy the following provisions:

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(a) and (c).

Part 2 – Zone B2 Local Centre - (1) Objectives of zone

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3

Part D5.1.3 – Objectives O3 and O6

Part D5.6.2 – Objective O4 and Controls C1 and C3.

6. Public Space

The proposed built form is detrimental to and does not provide an appropriate scale to Guilfoyle Park.

Particulars

- a) The proposed development has a front street wall design 5 levels in height.
- b) The proposal provides an awning along both Guilfoyle Avenue and Bay Street.
- c) The proposal fails to provide a 2.4m setback at level 5 and a 2.4m wide colonnade at street level in accordance with the WDCP 2015.
- d) The proposed development is contrary to the strategic approach for the redevelopment of the centre that was undertaken in a planned and co-ordinated way that was tailored for each site taking into considerations its unique characteristics.
- e) The proposal erodes and encloses the spatial qualities of the public domain at street level and is detrimental to the amenity of the public.
- f) The proposal does not provide an appropriate or consistent approach to the scale and civic importance of Guilfoyle Park
- g) The proposal does not interpret Guilfoyle Park's civic importance and establish a spatial relationship between the park and the buildings which address it.
- h) The proposal fails to satisfy the following provisions:

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(g), (j) and (l)

Part 2 – Zone B2 Local Centre - (1) Objectives of zone

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3

Part D5.1.3 – Objectives O5 and O7

Part D5.3.2 – Develop the particular qualities of different arts of the centre – Strategy f); and, Improve Double Bay's built form to provide appropriate definition to the public domain – Strategy a), b), c), d) and g).

Part D5.4.5 – Objective b)

Part D5.6.3.3 – Objective O1 and Control C1

Part D5.6.3.4 – Objective O1 and Controls C1 and C2

Part D5.6.4.2 – Objective O1 and Control C1

7. Amenity impacts

The proposal will result in unacceptable amenity impacts on adjoining residents and the future residents of the development.

Particulars

- a) The proposal, constructed to its rear boundary with a communal open space above, provides inadequate setback to the adjoining residential property at No.3 South Avenue based on the ADG Criteria which requires a minimum setback of 9m.
- b) This lack of setback and the elevated nature of the communal open space, compromises the amenity of the adjoining residents with respect to privacy, scale, bulk, sense of enclosure and overshadowing.
- c) Constructing a screen wall or boundary fence at an elevated level for the communal open space would exacerbate the overshadowing, scale, bulk and sense of enclosure to this adjoining residential property.
- d) The communal open space on the roof of the development is inadequately setback from the western boundary based on the ADG Criteria which requires a minimum setback of 9m.
- e) This lack of setback and the elevated nature of the communal open space, compromises the amenity of the immediately adjoining residents at No.4 Guilfoyle Avenue with respect to privacy.
- f) Within the complex on the south eastern side at Level 1 there is inadequate separation between a private terrace and an adjoining bedroom window based on the ADG Criteria which requires a minimum setback of 6m.
- g) The configuration of the development on Level 1 and location of fenestration and open space compromises the privacy of these future residents.
- h) The inadequate setback, the lack of design measures or consideration given to the location of the proposed units and their fenestration will compromise the amenity of its future residents having regard to the proximity and implications associated with the Royal Oak Hotel immediately adjoining to the south and in particular its beer garden.

- i) The lack of setback results in overshadowing of the rear private open space of the adjoining property at No.3 Guilfoyle Avenue contrary to the requirements of the DCP which requires 3hours between 9am-3pm in mid-winter.
- j) The proposal fails to satisfy the following provisions:

Apartment Design Guide:

Objective 3F-1 and Design Criteria 1 and Figure 3F.5
Objective 4H-1

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(g) and (l).
Part 2 – Zone B2 Local Centre - (1) Objectives of zone

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3.
Part D5.1.3 – Objective O8.
Part D5.3.2 – Improve Double Bay's built form to provide appropriate definition to the public domain – Strategy a) and g).
Part D5.6.5.1 – Objectives O1 and O2 and Controls C1 and C2.
Part D5.6.5.2 – Objectives O1, O2 and O3 and Controls C1 and C2.
Part D5.6.6 – Objective O1 and Control C2 and C3.

8. Misleading information

The information submitted with the development does not enable a thorough and accurate assessment of the potential acoustic impacts.

Particulars

- a) The Acoustic Report Assessment (ARA) submitted is silent and has made no assessment of the likely impacts from the Royal Oak Hotel immediately adjoining to the south and in particular its beer garden.
- b) The ARA distorts the potential background noise levels of the locality and its impact on the internal amenity of the units and any potential modifications to layout or openings to address this existing noise source.
- c) The proposal fails to satisfy the following provisions:

Environmental Planning and Assessment Act 1979

Section 4.15 (b)

9. Public interest

By reason of the contentions raised above, the proposal is not in the public interest.

PART B

THAT the Sydney Eastern City Planning Panel delegate its function in respect of the conduct of the appeal to the Manager of Development Control in accordance with Section 2.16(6) of the Environmental Planning & Assessment Act 1979.

ANNEXURES

1. Architectural plans and elevations
2. Referral Response – Urban Design Planner
3. Referral Response – Engineers
4. Referral Response – Traffic
5. Referral Response – Drainage
6. Referral Response – Health
7. Referral Response – Trees & Landscape
8. Referral Response – Ausgrid
9. Referral Response – WaterNSW
10. Submissions
11. Conditions without prejudice
12. Applicant's legal opinion relating to Clause 4.6 (Mr Galasso's advice)